IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.2795 OF 2006

The State of Maharashtra ...Applicant.
V/s.
1. Aatmaram Kisanrao Navle
2. Tukaram Kashiram Waghulde ...Respondents.

Mrs.M.M.Deshmukh, APP for the Applicant/State.
Shri S.K.Shelke for the Respondent Nos.1 and 2.

CORAM: J.H.BHATIA, J.
DATE : 29th March, 2007.

P.C.:

1. Heard Mrs.Deshmukh, the learned APP for the State. Perused the relevant papers and judgment.

2. The respondent nos.1 and 2 are Assistant Engineer and Sub Engineer respectively with M.S.E.B. According to the prosecution, the complainant had applied for electrical connection for his water pump. As he could not get it for a period of about 2 years, he contacted accused no.1. Accused no.1 demanded an amount of Rs.700/- for doing the work and at his instance amount of Rs.300/- was actually paid by the complainant to the wireman for and on behalf of the accused no.1. Accused no.1 was not willing to do the work unless the balance amount of Rs.400/- was paid to him. The complainant then approached the Anti Corruption Bureau and lodged the complaint. During the trap, as

instructed by the accused no.1, an amount of Rs.400/- was paid to the accused no.2 and the amount was recovered from him under panchanama. According to the prosecution, sanction was accorded for prosecution of accused no.1 and 2 by the competent authority and the case was tried by the Court. After trial, the learned Special Judge acquitted both the accused.

3. Besides that the trial Court did not believe the oral evidence, the learned trial Court noted that the prosecution had failed to examine sanctioning authority and to prove the sanction order and therefore the whole proceeding is vitiated for this purpose. He relied upon several authorities. It is not the case of the prosecution that the valid sanction order was admitted on behalf of the accused in response to the notice under Section 294 of the Cr.P.C. In absence of such admission and evidence of sanctioning authority, prosecution failed to prove that the sanction was accorded for prosecution by the competent authority and that too after application of mind to the facts. In view of this vital defect in the prosecution evidence, I find no fault with the order of the acquittal passed by the learned Special Judge. Therefore, I find that it is not a fit case to grant leave to prefer appeal against the acquittal.

4. Leave refused. Application stands rejected.

(J.H.Bhatia,J.)